Supreme Court, U.S.
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No. 01-

IN THE

Supreme Court of the United States

JOSE L. RODRIGUEZ, SERGEANT,
UNITED STATES ARMY,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Armed Forces

PETITION FOR WRIT OF CERTIORARI

ADELE H. ODEGARD, Colonel, JA*
Chief, Defense Appellate Division
U.S. Army Legal Services Agency
901 N. Stuart Street
Suite 340
Arlington, VA 22203
(703) 588-5281

NORMAN R. ZAMBONI
Major, JA
United States Army Reserve

MARY C. VERGONA
Captain, JA
United States Army

E. ALLEN CHANDLER, JR.
Lieutenant Colonel, JA
United States Army

TERRI J. ERISMAN
Captain, JA
United States Army

*Counsel of Record

PRESS OF BYRON S. ADAMS ✦ WASHINGTON, D.C. ✦ 1-800-347-8208

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QUESTION PRESENTED

WHETHER PETITIONER'S RIGHT TO DUE PROCESS GUARANTEED BY THE FIFTH AMENDMENT WAS VIOLATED WHEN THE GOVERNMENT, WITH THE COMPLICITY OF THE MILITARY JUDGE AND OVER DEFENSE COUNSEL'S REPEATED OBJECTION, KNOWINGLY PERSISTED IN PRESENTING A FALSE AND MISLEADING PICTURE OF THE EVIDENCE TO THE COURT-MARTIAL PANEL.

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CONSTITUTIONAL PROVISION:

U.S. Const., amend. V 2, 7

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PETITION FOR WRIT OF CERTIORARI

The petitioner, Jose L. Rodriguez, respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Armed Forces in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals is reported at 56 M.J. 336 (2002)(Appendix A). The decision of the United States Army Court of Criminal Appeals is unpublished. (Appendix B).

JURISDICTION

The judgment for the Court of Appeals for the Armed Forces was entered on March 13, 2002 (Appendix A). The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1259 (3); the United States Court of Appeals for the Armed Forces having reviewed this case pursuant to Uniform Code of Military Justice Article 67(a)(3), 10 U.S.C. § 867(a)(3).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves:

1. The Fifth Amendment to the United States Constitution which provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

STATEMENT OF THE CASE

Procedural History:

On April 2, May 29, and June 1-5, 1998, Sergeant Jose Rodriguez was tried at Schofield Barracks, Hawaii, before a general court-martial composed of officers and enlisted personnel. Contrary to his plea, Sergeant Rodriguez was found not guilty of premeditated murder, but guilty of murder while engaging in an act inherently dangerous to another, in violation of Uniform Code of Military Justice [U.C.M.J.] Article 118(3), 10 U.S.C. § 918(3) (1996). Sergeant Rodriguez was sentenced to thirty years confinement, reduction to the lowest enlisted grade, forfeiture of all pay and allowances, and a dishonorable discharge. The convening authority approved the adjudged sentence, waived the forfeitures for a period of six months, and credited Sergeant Rodriguez with 151 days of confinement

credit. On October 24, 2000, after oral argument, in a short-form opinion, the Army Court of Criminal Appeals affirmed the findings of guilty and the sentence. (Appendix B.)

On April 24, 2001, the United States Court of Appeals for the Armed Forces granted review on the following issue:

> WHETHER THE MILITARY JUDGE ERRED BY ADMITTING CERTAIN PORTIONS OF PETITIONER'S ADMISSIONS TO THE POLICE WHILE DISALLOWING OTHER PORTIONS.

The Court of Appeals for the Armed Forces rendered its opinion of March 13, 2002 (Appendix A), affirming the findings and sentence of the United States Army Court of Criminal Appeals.

STATEMENT OF FACTS

Sergeant Rodriguez' and his wife Angela's marriage was in trouble. (Record [R.] at 180, 187, 208, and 209.) Angela and her sister, Yvonne, went out together on New Year's Eve, 1997, and stayed out all night. Angela did not go out with her husband. (R. at 166.) On January 1, 1998, her husband's birthday, Angela did not return home from work to attend her husband's birthday barbecue and again stayed out very late. (R. at 196-7.) On January 2, 1998, Angela went out to several bars/clubs with friends and again stayed out all night, sleeping in another man's hotel room. (R. at 167-170.) Angela was openly cheating on her husband. (R. at 179.) Understandably, Jose was less than pleased with his wife's behavior. (R. at 208-9.) In the early morning of January 3, 1998, after being told that his wife was at a bar with "some guy," Jose waited at his wife's sister's house for his wife to return. When they returned from their night out, Angela and Jose drove home. Shortly thereafter, Angela died from anoxia of the brain due to some sort of choke hold. (R. at 397; Prosecution Exhibit 60.)

At 9:46 pm, on January 6, 1998, Sergeant Jose Rodriguez confessed to killing his wife.

> She then started assaulting me, pushing me, punching me . . . I remember I got [her] in this combat hold, and I told her to stay still and stop – stop hitting me. Before I knew it, she wasn't moving anymore. I let her go. She's – she looked lifeless, and I was scared
>
> . . . .
>
> I told her [Angela's mother] that me and Angela were abducted, instead of just telling her the truth. I don't know, I just – I couldn't just tell her what happened, not to her own daughter, out of respect to her . . . it was just a lie, because I couldn't face up to her. There was no way I could . . . I couldn't face up to it.

(R. at Defense Exhibit Z for Identification, 73-page transcript of petitioner's taped interview with the Honolulu Police Department.) Then, at 10:32 am of the next day, January 7, 1998, the petitioner also admitted to "messing up" his house to appear as if "somebody broke in" and painting the walls to "make it look like somebody had broken into the house, and me and my wife were dead." (R. at Defense Exhibit Z for Identification, 42-page transcript of petitioner's taped interview with the Honolulu Police Department.) Thus, after his wife died, Sergeant Rodriguez went into a panic and staged his house so that it would look like a break-in, gang-related vandalism, a burglary attempt, and an abduction.

The prosecution introduced multiple statements given by the petitioner in which he gave a false version of the events leading up to his wife's death. (R. at 235, 280-305.) The government chose not to introduce the statements in which petitioner admitted that he lied and explained how his wife actually died. The defense repeatedly tried to introduce these statements in an effort to ensure that the panel had a complete version of the petitioner's conduct after his wife's death. (R.

at 162; 274-80.) However, the military judge refused to allow these statements to be introduced. (R. at 450-456; 573-596.)

REASONS FOR GRANTING THE WRIT

This case offends all notions of fairness and integrity on which the criminal justice system is based. It stands for the proposition that the government is allowed to deliberately mislead the finder of fact. Stripped to its core, the government's strategy of proving petitioner's guilt consisted of presenting a false picture to the court-martial panel that petitioner had repeatedly lied about how his wife died without any attempt to provide the true story. Essentially, the prosecutors introduced a statement which petitioner had already admitted was a lie, objected to the introduction of the confession to that lie, proved the lie to be false, and then argued that petitioner's false statements demonstrated that he had intentionally killed his wife. The military judge was fully aware of the government's scheme to deceive the court-martial members, yet he did nothing to ensure that truth was a priority in petitioner's trial. In fact, after the government presented petitioner's initial story to the panel and proved it to be false, the military judge fortified the government's case by instructing the panel members on false exculpatory statements. (R. at 613, 624.) This directly contradicts any logical idea of "due process."

The prosecution was very open about how it planned to secure a conviction in this case. During its opening statement, the government revealed that it would show petitioner's intent to commit murder through "his words and his actions in the days after the murder when he tried to cover up what he had done." (R. at 140.) Unfortunately, the government never intended to provide the court-martial panel members with a complete picture of petitioner's words in the days after his wife's death. The prosecutor successfully and repeatedly

blocked the admission of petitioner's detailed, subsequent confessions and explanations. (R. at 450-456; 573-596.)

Throughout the trial, the defense tried to provide the factfinder with the complete story. (R. at 162; 274-80.) The prosecution admitted into evidence various false, exculpatory statements by the accused to his mother-in-law and the police that he and his wife and been violently abducted and kidnapped. (R. at 235, 280-305.) The government chose not to introduce evidence that, within 24 hours of those initial statements, petitioner gave two detailed accounts (a 73-page, taped interview and a 42-page, taped interview) of exactly what had transpired. (R. at Defense Exhibit Z for identification.) These accounts explain the mutual affray, his wife's assaults against him, his restraint of her, her unexpected death, his unsuccessful attempts to revive her, his remorse and consequent panic and confusion, the staging of the scene at his house, and his fabrications.

The defense attempted to admit these statements through various witnesses, but the military judge consistently ruled that the accused's confessions were not going to be entered into evidence without the accused taking the stand. (R. at 279-80, 432, 570-77, 595-99.) The defense counsel correctly characterized the government's tactic in the following way:

> They're only showing part of the admission, because the admission lasted several days.... the government is intentionally trying to hide the ball here. They're intentionally trying to mislead the panel into this fictitious – that this was his story. And it wasn't his story. It was only a small portion of his story of the events. The HPD knows that and the prosecutor knows that, and by limiting – by only presenting, "Oh well, this was his story to you?" "Yes, this was his story to us," they're trying to mislead the panel that

> that was his complete story. That wasn't his complete story.

(R. at 278, 279.)

The Fifth Amendment to the United States Constitution guarantees all persons accused by the government of committing criminal offenses that they will not "be deprived of life, liberty, or property, without due process of law." This Court has interpreted this provision to mean that a criminal defendant must be treated with the "fundamental fairness essential to the very concept of justice." *United States v. Valenzuela-Bernal*, 458 U.S. 858, 872 (1982)(citation omitted). *See also Rochin v. California*, 342 U.S. 165, 172 (1952)(governmental conduct which "shocks the conscience" or "offend[s] even hardened sensibilities" violates due process).

An analysis of due process requires in-depth scrutiny into the fundamental fairness exhibited by the government toward the individual accused, regardless of how other individuals under similar circumstances may have been dealt with by the prosecution in the past. *Ross v. Moffitt*, 417 U.S. 600, 609 (1973). When the government "brings its judicial power to bear" on an individual, the accused must be given a meaningful opportunity to present his defense and must be treated fairly and evenhandedly by his accusers. *Ake v. Oklahoma*, 470 U.S. 68, 76 (1985).

This Court has recognized the "principle that due process requires fairness, integrity, and honor in the operation of the criminal justice system, and in its treatment of the citizen's cardinal constitutional protections." *Moran* v. *Burbine*, 475 U.S. 412, 467 (1986)(Stevens, Brennan, and Marshall, JJ., dissenting). In that vein, this Court has found a variety of circumstances where criminal proceedings lack the element of fundamental fairness and thus violate an accused person's right to due process of law. See, e.g., *Wainwright v. Greenfield*, 474

U.S. 284, 295 (1986)(use of a suspect's post-Miranda warnings silence against him violates due process); *Blackledge v. Perry*, 417 U.S. 21, 26 (1974)(vindictive prosecution violates due process); *Brady v. Maryland*, 373 U.S. 83, 86 (1963)(stating "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.").

Moreover, it is well established that an accused's right to due process is violated where government evidence misleads the trier of fact. *See Mooney v. Holohan*, 294 U.S. 103, 112 (1935)(holding that a prosecutor's knowing presentation of false testimony is "inconsistent with the rudimentary demands of justice"); *Alcorta v. Texas*, 355 U.S. 28, 31 (1957)(holding that a due process violation occurs when a prosecutor fails to correct testimony he knows to be false even when the falsehood in the testimony goes only to the witness's credibility); *Giglio v. United States*, 405 U.S. 150, 155 (1972)(holding that due process required new trial where government witness testified falsely on matters relating to credibility and the prosecutor should have been aware of the falsehood). The conduct of the government and the military judge in this case flies in the face of this principle.

The defense attempted to ensure that the trier of fact was given the whole truth by introducing petitioner's confession using the rule of completeness, found in Military Rule of Evidence [M.R.E.] 304(h)(2). This rule, which has no counterpart in the Federal Rules of Evidence, states that "[i]f only part of an alleged admission or confession is introduced against the accused, the defense, by cross-examination or otherwise, may introduce the remaining portions of the statement." M.R.E. 304(h)(2). The policy behind this rule of completeness is to present statements that ought in fairness be considered contemporaneously with the statement introduced. *See United States v. Morgan,* 15 M.J. 128 (C.M.A. 1983).

Similarly, the common law rule of completeness was designed to prevent one side from misleading the trier of fact. *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153 (1988).

In the present case, the government intentionally created the incorrect impression that Sergeant Rodriguez' last words to the police were his fabrications. That is simply not the case. Sergeant Rodriguez completed his story and admitted his previous fabrications, yet the prosecution actively concealed the truth from the trier of fact. In fact, the government expert witness testified, "The accused had confessed to a choke hold on the neck and he had demonstrated what appeared to be to me like a carotid, sleeper hold." (R. at 435.) At that point, the government received the benefit of informing the panel that Sergeant Rodriguez had confessed to placing his wife in a choke hold. Yet, the government, with the military judge's concurrence, successfully withheld from the factfinder the statements in which petitioner explained how and why he applied the choke hold to his wife. Therefore, at that point, due process requires the accused be given the opportunity to introduce the remaining portions of his statement. He was denied that opportunity.

In this case, when confronted with the option of providing true or false information to the factfinder, the prosecution chose the latter. What is so alarming is that the government went beyond simply not providing the whole story. Instead, they selectively withheld information in a calculated strategy designed to skew the truth. This raises the vital question of whether a trial counsel's duty to prosecute within our adversarial system is a duty to convict or a duty to seek justice and truth. Surely, this Court will not condone a tactic specifically designed to conceal the truth rather than reveal it.

As this Court has stated, the American prosecutor plays a "special role" in the search for truth in criminal trials because he is "the representative not of an ordinary party to a

controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Strickland v. Greene*, 527 U.S. 263, 281 (1999)(citation omitted). The ruling of the Court of Appeals condones the government's deliberate efforts to win without regard for the cost to justice.

CONCLUSION

The prosecution and the military judge should have provided the factfinder with a more truthful and complete picture of the petitioner's conduct after his wife's death, rather than the deliberately false one they chose to present.

WHEREFORE, petitioner requests this Court set aside the finding of guilty and the sentence and remand the case for a new trial.

Respectfully submitted,

ADELE H. ODEGARD, Colonel, JA*
Chief, Defense Appellate Division
U.S. Army Legal Services Agency
901 N. Stuart Street
Suite 340
Arlington, VA 22203
(703) 588-5281

E. ALLEN CHANDLER, JR.
Lieutenant Colonel, JA
United States Army

TERRI J. ERISMAN
Captain, JA
United States Army

NORMAN R. ZAMBONI
Major, JA
United States Army Reserve

MARY C. VERGONA
Captain, JA
United States Army

Counsel of Record